

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 09-50026

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In the Matter of:

GENERAL MOTORS CORPORATION,

Debtor.

- - - - -x

U.S. Bankruptcy Court

One Bowling Green

New York, New York, New York

July 13, 2009

9:05 a.m.

B E F O R E:

HON. ROBERT E. GERBER

U.S. BANKRUPTCY JUDGE

1 APPLICATION for an Order Pursuant to Sections 327(a) and 328(a)
2 of the Bankruptcy Code and Bankruptcy Rule 2014(a) Authorizing
3 the Employment and Retention of Evercore Group L.L.C. as
4 Investment Banker and Financial Advisor for the Debtors Nunc
5 Pro Tunc to the Petition Date

6
7 APPLICATION to Employ Butzel Long as Special Counsel Nunc Pro
8 Tunc to June 10, 2009-07-14

9
10 DEBTORS First Omnibus Motion Pursuant to 11 U.S.C. Section 365
11 to Reject Certain Executory Contracts

12
13 MOTION to Reject Lease or Executory Contract re: Promotional
14 Services Agreement

15
16 MOTION of Debtors for Entry of Order Approving (I) Master
17 Disposition Agreement for Purchase of Certain Assets of Delphi
18 Corporation, (II) Related Agreements, (III) Assumption and
19 Assignment of Executory Contracts, (IV) Agreement With Pension
20 Benefit Guaranty Corporation, and (V) Entry Into Alternative
21 Transaction in Lieu Thereof

22
23
24 Transcribed By: Esther Accardi

25

A P P E A R A N C E S :

WEIL GOTSHAL & MANGES, LLP

Attorneys for Motors Liquidation Company,
formerly known as General Motors Corporation
767 Fifth Avenue
New York, New York 10153

BY: STEPHEN KAROTKIN, ESQ.

ROBERT LEMONS, ESQ.

JENNER & BLOCK, LLP

Attorneys for Motors Liquidation Company,
formerly known as General Motors Corporation
919 Third Avenue
New York, New York 10022

BY: ELIZABETH A. EDMONDSON, ESQ.

1 A P P E A R A N C E S : (continued)

2 SKADDEN ARPS SLATE MEAGHER & FLOM, LLP

3 Attorneys for Delphi Corporation

4 Four Times Square

5 New York, New York 10036

6

7 BY: KAYALYN A. MARAFIOTI, ESQ.

8 GREGORY W. FOX, ESQ.

9

10

11 KRAMER LEVIN NAFTALIS & FRANKEL, LLP

12 Attorneys for Creditors' Committee

13 1177 Avenue of the Americas

14 New York, New York 10036

15

16 BY: ROBERT SCHMIDT, ESQ.

17 GORDON Z. NOVOD, ESQ.

18

19

20 VEDDER PRICE, P.C.

21 Attorneys for Export Development Canada

22 1633 Broadway

23 New York, New York 10019

24

25 BY: MICHAEL L. SCHEIN, ESQ.

1 A P P E A R A N C E S : (continued)

2 U.S. DEPARTMENT OF JUSTICE

3 OFFICE OF THE U.S. ATTORNEY

4 86 Chambers Street

5 New York, New York 10007

6

7 BY: MATTHEW L. SCHWARTZ, ESQ.

8 JOSEPH N. CORDARO, ESQ.

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P R O C E E D I N G S

THE COURT: Okay, GM. Mr. Karotkin, good morning.

MR. KAROTKIN: Good morning, Your Honor. Stephen Karotkin, Weil Gotshal & Manges for Motors Liquidating Company, formerly known as General Motors Corporation.

Your Honor, the first thing on the agenda, I believe, is a motion, an uncontested matter, I believe was filed by the Jenner & Block, I don't know if they're on the phone or not.

THE COURT: Do we have --

OPERATOR: There are no telephonic appearances.

THE COURT: Pardon?

OPERATOR: There are no telephonic appearances.

THE COURT: Okay. Come on up, please, Miss.

MS. EDMONDSON: Elizabeth Edmondson of Jenner & Block.

THE COURT: Can I get your last name again please? Can you come closer to the microphone, you're competing with the air conditioning system.

MS. EDMONDSON: Sure. Elizabeth Edmondson of Jenner & Block.

THE COURT: Sure, Ms. Edmondson, go ahead.

MS. EDMONDSON: And I'm here on behalf of Motors Liquidation Company on a motion pursuant to Section 365 to reject promotional services agreement between General Motors Corporation and Exhibitions Company.

The motion is uncontested. I'm happy to describe the

1 motion if you'd like, or I can just hand up the order.

2 THE COURT: No, with the case management order you
3 don't need to say anymore on an unopposed motion. So your
4 motion is granted. And I'd ask you to drop off the paperwork
5 and floppy with Ms. Blum across the hall.

6 MS. EDMONDSON: Okay.

7 THE COURT: Thank you. Mr. Karotkin?

8 MR. KAROTKIN: Thank you, sir. The next motion is a
9 motion to reject certain various executory contracts.

10 An objection was filed on behalf of two entities.
11 Since that time that objection has been withdrawn. And two of
12 the contracts associated with that objection have been
13 eliminated from the exhibit and the proposed order.

14 And with that, Your Honor, it's uncontested.

15 THE COURT: Again, it's granted, Mr. Karotkin.

16 MR. KAROTKIN: Thank you, sir. And we have an order
17 we'll give to your clerk.

18 THE COURT: Okay. What else do we have for 9 o'clock?

19 MR. KAROTKIN: I don't believe anything else.

20 THE COURT: Okay. Well, I only came out with my 9
21 o'clock stuff. So we'll take a -- okay, wait. I think
22 creditors' committee has something.

23 MR. SCHMIDT: Your Honor, I think the application of
24 Butzel Long as committee co-counsel was on for 9.

25 THE COURT: Yes, it is. Any desire to talk on that,

1 Mr. Schmidt?

2 MR. SCHMIDT: Not on my part, Your Honor. I'm not
3 aware of any objections. Mr. Seidel is in Court to answer any
4 inquiries the Court has.

5 THE COURT: Well, frankly, Mr. Seidel, I don't have
6 any questions. So that's also granted?

7 MR. SCHMIDT: Thank you.

8 THE COURT: Okay. We'll reconvene at 9:45.

9 (Recess from 9:07 a.m. until 9:47 a.m.)

10 THE COURT: Okay. GM, Motors Liquidation Corporation.

11 MR. LEMONS: Good morning, Your Honor. Robert Lemons
12 from Weil Gotshal & Manges on behalf of Motors Liquidation
13 Company.

14 I'm here this morning, Your Honor, on the motion that
15 was filed at docket number 2096 by Motors Liquidation Company
16 and its affiliated debtors, for entry of an order authorizing
17 and approving a variety of actions by Motors Liquidation
18 Company in connection with the sale of substantially all of the
19 operating assets of Delphi Corporation and its affiliates to an
20 entity that was -- two former subsidiaries of Motor Liquidation
21 Company that are now subs of General Motors Company and to
22 Parnassus Holdings II LLC.

23 THE COURT: Right. Hold on for just a minute, Mr.
24 Lemons.

25 (Pause)

1 THE COURT: Go ahead, please, Mr. Lemons.

2 MR. LEMONS: Before I get started, Your Honor, I'd
3 like to just offer into evidence the two declarations that we
4 filed in connection with this motion.

5 There was a declaration of Randall L. Papal (ph.)
6 which was filed at docket number 3052. And a declaration of
7 Rick Westenburg (ph.) which was filed at docket number 3053.
8 Both were business people employed by Motors Liquidation
9 Company prior to the sale on Friday, who were involved in the
10 negotiations of the transactions. They're both here in Court
11 today.

12 THE COURT: Remember, Mr. Lemons, that under the case
13 management order, allegations in the motion and if there are
14 any accompanying declarations, are taken as true, so you don't
15 even need to go through that unless somebody puts those issues
16 into dispute.

17 MR. LEMONS: I'm happy to stop.

18 THE COURT: Okay.

19 MR. LEMONS: Your Honor, we submitted a revised order
20 to chambers over the weekend. I'd be happy to discuss any
21 questions you have with it, or about the transaction, or I can
22 stop now.

23 THE COURT: I didn't get the revised order. I do have
24 a number of questions. Obviously, this is in the context of it
25 being unopposed. Maybe if the revised order had gotten to me I

1 would have been able to discern the answers.

2 Your motion was filed on June 20th -- excuse me, July
3 20th (sic) before the events of last week and my ruling from
4 about ten days ago. How does your existing motion and the
5 disposition of the assets to New GM affect this motion; how do
6 they mesh together?

7 MR. LEMONS: Well, it's -- the affect of the sale has
8 caused us to enter into an assignment agreement. It's an
9 agreement between what I'll call Old GM, New GM, Delphi and
10 Parnassus. Pursuant to which, all but a handful of the rights
11 and obligations under the master disposition agreement and the
12 other Delphi transaction agreements have been transferred from
13 Old GM to New GM. The reason for that is that the GM
14 subsidiaries that will be actually acquiring the bulk of those
15 assets are now subsidiaries of New GM and also the funds to
16 fund the transaction are with New GM and not with Old GM.

17 The affect of this assignment agreement is the only
18 remaining liabilities of Old GM under the transaction documents
19 are those that relate to a small number of contracts between
20 Old GM and Delphi that will not be assigned to New GM upon the
21 closing of the transaction. And the obligation of Old GM to
22 undertake actions other than providing funds or assuming
23 liabilities that will be necessary to allow New GM to close the
24 transaction.

25 As part of that agreement, New GM has agreed to

1 reimburse Old Delphi for its costs and -- I'm sorry, Old GM for
2 its costs in undertaking these actions. And Old GM is no
3 longer going to be liable for any obligations to fund any
4 amounts or assume any liabilities in connection with the
5 closing of the transaction.

6 THE COURT: So this deal is neutral to the unsecureds
7 in this case?

8 MR. LEMONS: Yes. Basically, the primary remaining
9 obligations of Old GM will be to, one, waive administrative and
10 pre-petition claims against Delphi. Two, terminate a number of
11 commercial agreements and the master restructuring agreement
12 between Old GM and Delphi on the closing of the MDA. And,
13 three, make payments in the interim to Delphi that are due
14 under the master restructuring agreement. But those payments
15 New GM has agreed to reimburse Old GM for.

16 THE COURT: So the deal is, likewise, neutral to
17 Motors Liquidation's liquidity needs?

18 MR. LEMONS: Yes, Your Honor.

19 THE COURT: As of the time that you filed the motion
20 there was still contemplated bidding in the Delphi case where
21 Parnassus or Platinum amount bid in that auction in the Delphi
22 case?

23 MR. LEMONS: Your Honor, I don't believe that any bids
24 were submitted. But the DIP lenders of Delphi have until --
25 let me just confirm the date. I believe it's until July 16th

1 to submit a pure credit bid for the assets. And if they do
2 there can still be an auction on July 17th.

3 THE COURT: Uh-huh.

4 MR. LEMONS: So that situation remains influx. There
5 are also still a number of objections to the transaction that
6 have been filed in the Delphi case.

7 THE COURT: Is New GM's management comfortable that if
8 anybody credit bids or outbids it will have a satisfactory
9 source of supply?

10 MR. LEMONS: That remains to be discussed, Your Honor,
11 as part of the discussions going on among the various parties-
12 in-interest to the transaction. It's, obviously, critical to
13 New GM that the results at the end of the sort of Delphi sale
14 process is such that New GM has secured its source of supply.
15 But there's a lot of uncertainty right now as to who may or may
16 not end up owning and running those assets if there were to be
17 a credit bid. And that's something that New --

18 THE COURT: Well, that's the whole point of the deal,
19 isn't it, to ensure that there's a satisfactory source of
20 supply?

21 MR. LEMONS: Absolutely. But if there's a credit
22 bid -- I mean, there's a possibility, Your Honor, there could
23 be a credit bid that could top this existing bid, that Judge
24 Drain could approve. And New GM wouldn't necessarily be able
25 to veto that one way or the other. So it's very -- keeping a

1 very close eye on things and it's very involved in negotiations
2 to try to ensure that the resolution is such that its supply
3 will be secure.

4 THE COURT: Your point is that looking at it from a
5 slightly parochial point of view that's not the problem of this
6 estate.

7 MR. LEMONS: I wouldn't want to say anything that
8 sounded flippant, but I think it is -- it's the problem of this
9 estate only to the extent that this estate owns an interest in
10 New GM. And, obviously the value of New GM would be -- would
11 suffer if supply was not secured.

12 THE COURT: Uh-huh.

13 MR. LEMONS: So this estate will, Your Honor, I
14 believe cooperate in a sale process to help New GM to obtain
15 the secure supply. But it's New GM that will have to supply
16 the funding and assume the liabilities and really negotiate
17 that deal. Because it's the party injecting the real economics
18 into it.

19 THE COURT: Uh-huh. Is the PBGC deal done?

20 MR. LEMONS: No. But it's anticipated that Old GM
21 will not be a party to that. So we have not sought any relief
22 with respect to that in the modified order.

23 THE COURT: Okay. I'd like to hear from the
24 creditors' committee and the government.

25 MR. NOVOD: Good morning, Your Honor. Gordon Novod of

1 the law firm of Kramer Levin Naftalis & Frankel.

2 THE COURT: Your last name, again, please.

3 MR. NOVOD: Sure. It's Gordon Novod, N-o-v-o-d.

4 THE COURT: Okay.

5 MR. NOVOD: ON behalf of the creditors' committee, and
6 from the law firm of Kramer Levin Naftalis & Frankel.

7 Your Honor, as the Court is certainly aware, Friday
8 was a momentous day for, both Old GM and New GM, in that it was
9 the consummation date of a momentous transaction under which
10 the wind-down of this estate and Old GM was put in motion. And
11 one of the things which, Your Honor, I'm happy to report, is
12 that this transaction that we stand here today, before the
13 Court, we have been attentive and focused on issues particular
14 to unsecured creditors. And attentive to issues to ensure the
15 wind-down of the estate and the liquidity sources which Your
16 Honor has noted before are maintained and preserved. And in
17 doing so --

18 THE COURT: Pause, please, Mr. Novod.

19 MR. NOVOD: Of course.

20 THE COURT: After the creditors' committee's dialogue
21 and its due diligence are you satisfied that the answers that
22 the debtors gave me that it was neutral to your constituency
23 were accurate?

24 MR. NOVOD: Yes, they are, Your Honor. We've worked
25 hard to that effect, and we've spent quite a bit of time not to

1 minimize the time spent over the past few years by the company,
2 Old GM, and Delphi and other creditor constituents in those
3 bankruptcy cases. We've spent quite a bit of time focusing on
4 this last week, Your Honor, to ensure that Old GM will be
5 protected. And that, in essence, the status quo is preserved
6 here. And that Old GM is not assuming any liability. It will
7 continue to perform. It will be reimbursed to the extent it is
8 asked to do anything which costs any money out-of-pocket for
9 Old GM. And to allow this transaction with Delphi to move
10 forward.

11 THE COURT: Okay, continue, please, Mr. Novod.

12 MR. NOVOD: Yes. So just to highlight, Your Honor,
13 for a few things. One, we've focused on ensuring that the
14 obligations and liabilities of GM were effectively transferred
15 from Old GM to New GM. As Your Honor is certainly aware this
16 estate -- the Old GM estate, will not have the necessary cash
17 if it were required to complete this transaction, which made
18 the agreement of an assignment agreement a necessity here.

19 In addition to that, there are certain provisions
20 under the master purchase agreement, which Your Honor approved,
21 I believe, on the 5th of July, which will help effectuate this
22 transaction. So upon closing this transaction we are satisfied
23 that, in essence, the status quo will be preserved. But when
24 the Delphi transaction does close that liability and obligation
25 to perform under the Delphi transaction will be transferred to

1 the New GM subject, of course, to the exceptions that Mr.
2 Lemons mentioned on the record a few minutes ago.

3 THE COURT: Okay, thank you.

4 MR. NOVOD: Thank you, Your Honor.

5 THE COURT: I'll hear from the U.S. Government and
6 Export Development Canada, if either wants to speak.

7 MR. SCHWARTZ: Matthew Schwartz for the United States.

8 THE COURT: Come to a microphone, please, Mr.
9 Schwartz.

10 MR. SCHWARTZ: Matthew Schwartz for the United States.
11 I really don't have anything to add, Your Honor. Treasury and
12 the Auto Task Force have worked with the parties-in-interest in
13 the Delphi case to move towards these underlying transactions.
14 We support them fully.

15 THE COURT: Okay. Mr. Schein, good morning.

16 MR. SCHEIN: Good morning, Your Honor. Michael
17 Schein, Vedder Price, on behalf of Export Development Canada.

18 Consistent with the U.S. Government we also support
19 this transaction. I have nothing to add at this time.

20 THE COURT: Okay. All right, then --

21 MR. LEMONS: Your Honor, if I may?

22 THE COURT: Mr. Lemons.

23 MR. LEMONS: Just very briefly. We committed to
24 Delphi that we agreed one sentence on the record for them.
25 They just asked us to read the following: "Delphi Corporation

1 reserves all rights respecting Old GM's assumption and
2 assignment of the contracts to be assumed and assigned upon the
3 closing of the master disposition agreement. Including but not
4 limited to the right to object to any cure amounts and the
5 right to object to the transfer of any contract other than in
6 its entirety."

7 THE COURT: Okay.

8 MR. LEMONS: Thank you.

9 THE COURT: All right. Anything else, anybody? All
10 right. Given the lack of opposition I don't need to make
11 extensive findings here. The transaction's approved. Debtors
12 have satisfied me that it's an appropriate exercise of business
13 judgment and that it's neutral to the parties-in-interest in
14 this case. So you can submit the revised order and floppy.

15 Better check, Mr. Lemons, because if I'm not aware of
16 it, that suggests that it somehow didn't get to my chambers.

17 And unless we had a chambers breakdown, which, of
18 course, is possible. But I don't know.

19 So when we're finished today just stop by in chambers
20 and we'll get it done.

21 What else do we have today.

22 MR. LEMONS: I believe that's all for the agenda.

23 THE COURT: Everything for the 9:45? I thought I had
24 more, just a second, please.

25 No, I guess we took care of the rest at 9 o'clock.

1 Okay, we're adjourned.
2 (Proceedings concluded at 10:01 a.m.)
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Substantially All Of The Operating Assets
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C E R T I F I C A T I O N

I, Esther Accardi, certify that the foregoing transcript is a
true and accurate record of the proceedings.

ESTHER ACCARDI (CET**D-485)

AAERT Certified Electronic Transcriber

Veritext LLC

200 Old Country Road

Suite 580

Mineola, New York 11501

Date: July 14, 2009

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